86-1001

Supreme Court, U.S.
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In The

Supreme Court of the United States

January Term, 1987

GRAY HILL, INC.,

Petitioner,

v.

INDUSTRIAL COMMISSION OF ILLINOIS AND AUDREY LIETZ,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

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QUESTIONS PRESENTED

1. Whether Due Process is denied when a State Agency enforces its own Rule limiting evidence, which prevents a Litigant from producing key, eyewitness testimony to a disputed accident, and that Agency's Rule contradicts the State's Statute.

2. Whether the Appellate Court of Illinois denied equal protection of the law when its Order remanded the case for additional evidence to give the employee the opportunity to prove $69,890.00 in medical bills, but the Order refused the employer the equal opportunity to prove by key, eyewitness testimony the primary disputed matter.

STATEMENT REQUIRED BY RULE 28.1

Gray Hill, Inc. is not a subsidiary or affiliate of any corporation and has no parent corporation.

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ILLINOIS INDUSTRIAL COMMISSION AND AUDREY LIETZ

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

Petitioner, GRAY HILL, INC., respectfully prays that a Writ of Certiorari issue to review Decision and Order of the Illinois Appellate Court, First District.

OPINION BELOW

The opinion of the Illinois Appellate Court, First District, is reported as 495 N.E.2d 1030 (Ill App. 1 Dist) and is reproduced in Appendix 2a to this Petition. The Order of the Illinois Supreme Court which denied appeal is reproduced in Appendix 12a to this Petition. The opinion of the Circuit Court of Cook County, Illinois is unreported and is reproduced in Appendix 13a to this Petition. The opinion of the Arbitrator of the Illinois Industrial Commission is unreported and is reproduced in Appendix 29a to this Petition. The Decision of the Illinois Industrial Commission is unreported and is reproduced in Appendix 19a to this Petition.

JURISDICTION

The Decision of the Appellate Court of Illinois, First District, was filed June 11, 1986 (Appendix 2a). Petitioner filed a timely Petition for Appeal to the Illinois Supreme Court. The Petition was not allowed in an Order dated September 16, 1986. This Order is reproduced in Appendix 12a. This Petition was filed within ninety (90) days of that date. The jurisdiction of this Court is envoked under 28 U.S.C. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional Provision involved in this matter is the Fourteenth Amendment to the United States Constitution which provides as follows:

> "... no state shall make or enforce any law which shall abridge the privilege or immunities of the United States; nor shall any state deprive any person of life, liberty or property, without Due Process of Law; nor deny to any person within its jurisdiction, equal protection of the laws."

The Petitioner raised the Due Process of Law issue before the Appellate Court of Illinois and the Court addressed this issue on its order which is reflected in Appendix 2a. The Appellate Court found that "- - - the exclusion of this evidence did not violate Respondent's Due Process rights." *Whyy, Inc. vs. Burough of Glassboro,* et al, 393 US 117.

STATEMENT OF THE CASE

The case was filed under the Illinois Workers' Compensation Act (Ill. Rev. Stat. 1977 Ch. 48, Par. 138.1 *et seq.*) wherein Audrey Lietz, employee, alleged injuries which arose out of and in the course of her employment with Gray Hill, Inc., employer. She finished work for the company on February 6, 1978, and punched a time clock at about 4:30 p.m. She exited a door, crossed a perpendicular sidewalk and testified she was injured when she slipped on ice and fell on a sidewalk leading to the public street. She intended to cross the street to the company parking lot. She also testified as to medical treatment.

The issue on compensability of the case depended on whether she fell on the premises, an extended portion of the premises, an area maintained by the Gray Hill corporation, or a public street.

In dispute were medical expenses as well as the initial dispute as to the location of the accident in question.

An Arbitrator for the Illinois Industrial Commission entered an award on behalf on Audrey Lietz and the employer, Gray Hill, Inc., filed a timely Review.

On review before the agency, Audrey Lietz introduced $69, 987 in medical bills but the Illinois Industrial Commission Commissioner refused to allow Gray Hill, Inc. to have a key eyewitness testify on the question of where the fall of Audrey Lietz occurred.[1] An offer of proof was made indicating that the witness would have testified that he knew Audrey Lietz and that he saw her fall on the public street. The Commission affirmed the arbitrator and further granted $69,987 in medical expenses.

An Appeal was taken to the Circuit Court of Cook County, Illinois and the judgment of the Circuit Court

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[1] *Osborn vs. the Industrial Commission* 50 Ill.2d 146. Injury while crossing a public street en route to company parking lot held to be not compensable.

affirmed the Industrial Commission. That Order is found in Appendix 13a.

Appeal was taken to the Appellate Court of Illinois, First District. This body was established by Rule of the Illinois Supreme Court to hear the Appeals in Workers' Compensation Cases. By Brief and Argument, Gray Hill, Inc. raised the question of Due Process of Law, in that a key eyewitness was not allowed to testify before the Illinois Industrial Commission, and that witness was absolutely essential to the affirmative defense being offered by Gray Hill, Inc. The Brief pointed out that burden of proof or rebuttal was impossible without that key eyewitness and that this exclusion deprived Gray Hill, Inc. of Due Process of Law. The Appellate Court addressed the question of Due Process of Law in its Decision, which is found in Appendix 2a.

After stating that Gray Hill, Inc. was not deprived of Due Process of Law, it agreed with Gray Hill, Inc. that Petitioner had not proven $69,987.00 in medical expense. The Appellate Court of Illinois refused to remand the case to the Industrial Commission for further testimony to afford Gray Hill, Inc. the opportunity to present its eyewitness on the key question as to where the accident occurred. In the same Order denying this opportunity to Gray Hill, Inc., the Appellate Court of Illinois remanded the case to the Industrial Commission to afford Audrey Lietz, the employee, an opportunity to prove $69,987.00 in medical expense.

Gray Hill, Inc. filed a Petition to the Illinois Supreme Court alleging a violation of a Constitutional Right and asking for relief. Appeal to the Illinois Supreme Court is discretionary with the Court and the Appeal of Gray Hill, Inc. was denied.

This Petition for Writ of Certiorari to the United States Supreme Court was filed within 90 days of the denial by the Illinois Supreme Court.

REASONS FOR GRANTING THE WRIT

Due Process of Law was denied when the State Agency known as the Illinois Industrial Commission published and enforced its own Rule with disregard to the fundamental constitutional rights of Procedural Due Process. A fair trial was not held when the Commissioner decided to evoke the Industrial Commission Rule, effective July 1, 1982, which read as follows:

> "4-(4)-(B)-(3)-Evidence may be adduced on Review if the evidence was not introduced at the Arbitration Hearing for good cause."

The state's statute known as the Illinois Workers' Compensation Act in effect at the time of the alleged accident, and the hearings, stated specifically (Ill. Rev. Stat. 1977 and 1980, Ch. 48, Par. 138.1-19(e):

> "If a Petition for Review and Agreed Statement of Facts or Transcript of Evidence is filed as provided herein, the Commission shall promptly review the Decision of the Arbitrator or Committee of Arbitration, and all questions of law or fact which appear from the Statement of Facts or Transcript of Evidence, and such additional evidence as the parties may submit."

The Illinois Statute which established the Workers' Compensation Act and the Industrial Commission of Illinois, was quite clear in that the parties could submit additional evidence on Review before the Commissioner. The Commissioner evoked a new Industrial Commission Rule by arbitrarily holding that "no good cause" was shown even though the defense of Gray Hill Inc., knew nothing about the existence of the witnesses until just before the Review Hearings were held.

The Illinois Supreme Court's Decisions and statements regarding Review Hearings before the Illinois Industrial Commission were stated in such cases as *O'Neal Brothers Construction Company vs. the Industrial Commission,* 93 Ill. 2d, 30, 66 Ill. Dec. 334, 442 N.E. 2d 895 (November term, 1982).

> "The Workers' Compensation Act does not limit testimony admissible before the Industrial Commission sitting in Review of an Arbitrator's award to that already adduced before the Arbitrator."

The Rule had long been established by the Illinois Supreme Court in the Case of *Meade vs. The Industrial Commission,* 48 Ill. 2d, 215 wherein the Supreme Court stated that:

> "The jurisdiction of the Industrial Commission to review evidence taken before Arbitrator, and to consider any further evidence properly presented to it, is original as opposed to Appellate jurisdiction, and such Review is neither a trial de novo nor simply a review of the record, but is sui generis." *National Biscuit vs. The Industrial Commission,* 84 Ill. Dec 341, 472 N.E. 2d 91. *Gray vs. Industrial Commission,* 76 Ill. 2d 552

The rules governing Appellate proceedings on a Worker's Compensation case are not in effect until that case reaches the Circuit Court level.

The Arbitrary Ruling of the Commissioner prevented Gray Hill, Inc. from having a key eyewitness testify to the disputed issue as to where the place of accident was located. That key-witness exclusion placed an unreasonable and impossible burden upon Gray Hill, Inc. in defense of its case. A fair hearing was not held. Due Process of Law requires at least the opportunity to present witnesses. *Wong Yang Sung vs. McGrath Attorney General, et al,* 339 U.S. 33. Due Process of Law requires a full hearing before an Agency, and the hearing, itself, must be fair. *Ohio Bell Telephone Company vs. Public Utilities Commission of Ohio,* 301 U.S. 292.

Throughout the United States, State Agencies routinely publish and enforce various regulations and rules of their own, to save time and move cases, sometimes in violation of fundamental constitutional rights of the parties. Most agency cases are not appealed because of the

costs to the parties. While the Courts in Illinois adopted the Industrial Commission Rulings, and the Appellate Court specifically decided Due Process of Law was not denied to Gray Hill, Inc. the facts point to the fundamental proposition that this State Agency was allowed to "legislate by rule" in contradiction of the state's own statute, so that the constitutional rights of Gray Hill, Inc. were effectively denied.

The Order of the Appellate Court of Illinois violated the Fourteenth Amendment to the United States Constitution, when it denied Gray Hill, Inc. the equal opportunity of presenting evidence before the Industrial Commission on remand, to prove its contention that Audrey Lietz fell on a public street. That same Order of the Appellate Court did remand the case to allow Audrey Lietz the opportunity to prove before the Illinois Industrial Commission, that she was entitled to $69,987.00 in medical expense. Thus, the Order denied equal protection of the law to the employer, Gray Hill, Inc.

Throughout the United States State Workers' Compensation Statutes are meant to protect employees in the event of industrial injuries and are usually administered by State Agencies for that basic purpose. However, the employers must be given a fair hearing, including the right to present witnesses in disputed cases.

The case is of national importance, because a Decision from the United States Supreme Court could present a clear notice to all State Agencies and State Courts that the Constitution of the United States is protected by the United States Supreme Court and the due process rights of the citizens of the States cannot be abridged by arbitrary State Agency Regulations nor can they be denied by the State Courts. *Herb vs. Pitcairn, et al, Receivers for Wabash Railroad Company,* 324 U.S. 113. *Whyy, Inc. vs. Burough of Glassboro, et al,* 393 U.S. 117. *Bowman Transportation, Inc. vs. Arkansas Best Freight*

System, Inc. et al, 419 U.S. 281. *Withrow et al vs. Larkin,* 421 U.S. 35, *National Association for the Advancement of Colored People, et al, vs. Clairborne Hardware Company, et al,* 458 U.S. 886, *Londoner vs. Denver,* 21 U.S. 373.

CONCLUSION

For the reasons stated, this Court should grant the Petition for Certiorari, summarily vacate the Illinois Appellate Court's Decision and remand for appropriate action to allow the Petitioner the opportunity to have key witnesses heard by The Illinois Industrial Commission.

Respectfully submitted,

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APPENDIX

No. 1-85-2111

In The
Appellate Court of Illinois
First District
Industrial Commission Division

GRAY HILL, INC., *Plaintiff-Appellant,* *v.* **INDUSTRIAL COMMISSION OF ILLINOIS and AUDREY LIETZ,** *Defendants-Appellees.*	Appeal from the Circuit Court of Cook County. Honorable **Earl Arkiss,** Judge Presiding.

JUSTICE KASSERMAN delivered the opinion of the court:

Petitioner, Audrey Lietz, filed an application for adjustment of claim under the Workers' Compensation Act (Ill. Rev. Stat. 1983, ch. 48, par. 138.1 *et seq.*) for arm, neck and back injuries which allegedly arose out of and in the course of her employment with respondent, Gray Hill, Inc. After the arbitration hearing, the petitioner was awarded temporary total disability compensation (Ill. Rev. Stat. 1983, ch. 48, par. 138.8(b)) which had accrued intermittently between February 6, 1978, and August 10, 1981, reasonable and necessary medical expenses (Ill. Rev. Stat. 1983, ch. 48, par. 138.8(a)) and $86.13 for a period of 400 weeks due to an 80% permanent disability (Ill. Rev. Stat. 1983, ch. 48, par. 138.8(d)(2)). On review, the Industrial Commission affirmed the decision of the arbitrator. In doing so, the

Industrial Commission found that petitioner was temporarily totally disabled for a period of 160 1/7 weeks and found reasonable and necessary medical expenses to be $69,686.90. The circuit court confirmed the decision of the Industrial Commission. The respondent has perfected the instant appeal.

The evidence establishes that beginning in August 1977, the 31-year-old claimant assembled electronic switches for the respondent. On February 6, 1978, at 4:30 p.m., claimant and a number of other employees punched the time clock, walked approximately twenty feet, and exited the building through a doorway which petitioner claims she was instructed to use. Petitioner stated that she was walking on the sidewalk outside the doorway toward the employee parking lot located across the street when she slipped and fell on ice and that her tailbone, head, and left arm came into contact with the surface of the sidewalk. According to claimant, she immediately felt pain in her neck and back. Claimant further asserts that she saw one of respondent's employees shoveling the sidewalk outside the door at 7:30 a.m. that morning. Claimant stated that after her fall, a man came over to assist her but that she refused assistance, walked away under her own power, and drove home. Upon arrival, she informed the supervisor of the accident. Her supervisor told her that the company would arrange for x-rays the following morning.

When claimant reported for work the following day, she was sent to LaGrange Community Hospital for x-rays. These x-rays were negative. On March 28, 1978, claimant was examined by a physician at the insistence of respondent. This physician stated that claimant's complaints were "bizarre" and that she should resume gainful employment. Upon returning to work on April 10, 1978, claimant found that her left hand would not function properly and that her neck and back hurt. Claimant worked sporadically thereafter until she was informed that she must resume full-time employment or be terminated. According to claimant, she resumed full-

time employment on May 30, 1978, even though she felt her condition was worsening.

On October 5, 1978, claimant saw her physician and discontinued full-time employment. From October 9 through December 15, 1978, claimant was hospitalized for back trouble; and she subsequently was hospitalized several times for back trouble. Two surgical operations were performed upon claimant during those periods of hospitalization: a lumbar laminectomy and a resection of the left rib to correct Thoracic Outlet Syndrome. In a medical report dated March 13, 1981, a physician who examined claimant at claimant's request concluded that in his opinion the claimant "has a total disability on an industrial basis." Claimant admitted that she had back and gall bladder trouble prior to the injury.

On review before the Industrial Commission, Roger Kulle, an employee of respondent, testified that on February 6, 1978, shortly after 4:30 p.m. he punched out and walked toward the employee parking lot located across the street. While on his way to the parking lot, he saw a woman fall on the street between two parked cars. He assisted this woman to her feet and she walked away without assistance. Mr. Kulle testified that the sidewalk upon which claimant allegedly fell was clear of any ice or snow. He further testified that the door by the time clock was not the required access for factory employees.

Several exhibits relating to the locality of the alleged injury and the nature and extent of claimant's medical treatment were also admitted into evidence on review. Photographs of the location where claimant asserts the injury occurred depict several benches on specially constructed stone and concrete with matching stone and concrete garbage containers, all of which are located between the company building and the street. The company plats and surveys show the removal of concrete walks and driveways with specially constructed sidewalks, cross-walks, carriage walks, driveways, fences, "new planting, landscaping by

owner," new trees to be planted, and other items in a "Plan for Parkway Landscaping" plat and other plats. The voluminous medical exhibits detail plaintiff's medical treatment between the date of the injury and the date of the hearing on review. These exhibits show that the claimant's medical treatment expenses during this time were $69, 686.90. Claimant testified that this treatment was for the injury she sustained. Respondent's objection to the admission of these records on the ground that the causal relationship between the treatment and injury was not established was denied.

The Industrial Commission refused to allow an alleged eyewitness and an architect to testify before it for respondent because the witness should have been produced during the arbitration hearing. The record shows that the alleged eyewitness had informed the respondent's personnel office of claimant's fall approximately two days after it occurred. The Industrial Commission also refused to allow respondent to submit the results of a recent medical examination of claimant.

On appeal, Gray Hill, the respondent, raises four issues: (1) claimant's injuries are not compensable because they were sustained off the employer's premises; (2) the Industrial Commission improperly disallowed respondent's attempted presentation of additional medical and testimonial evidence on review of the arbitrator's decision; (3) the 80% permanent disability award under the "man as a whole" provision is contrary to the manifest weight of the evidence; and (4) the $69,686.90 medical expense award is contrary to the manifest weight of the evidence.

It is the province of the Industrial Commission to judge the credibility of witnesses, draw reasonable inferences from the evidence, and determine the weight evidence is to be given. *(Steiner v. Industrial Com.* (1984), 101 Ill. 2d 257, 260, 461 N.E.2d 1363, 1364.) Fact findings of the Industrial Commission will not be set aside unless they are contrary to the manifest weight of the evidence. *(Rice v. Industrial Com.* (1980), 81

Ill. 2d 544, 547, 410 N.E.2d 860, 861.) In the instant case, the Industrial Commission found that: (1) claimant slipped and fell on the sidewalk; (2) the doorway through which claimant exited was the only permissible exit; (3) claimant exited during the rush hour period; (4) the property adjacent to the cross-walk had been improved by the employer; and (5) claimant's route was attendant with the dual hazards of icy conditions and the flurry of rushing employees.

Although the respondent in the instant case improved and maintained the sidewalk upon which the injuries occurred, the actual ownership of the sidewalk was not definitively established. Thus, we must assume that the injury occurred off the employer's premises. (*Bommarito v. Industrial Com.* (1980), 82 Ill. 2d 191, 194, 412 N.E.2d 548, 549-550.) Injuries which occur off the employer's premises are generally not compensable unless (1) the employee's presence was required in the performance of his or her duties, and (2) the employee is thereby exposed to a risk common to the general public but to a degree greater than other persons. *Bommarito v. Industrial Com.* (1980), 82 Ill. 2d 191, 194, 412 N.E.2d 548, 550.

In the instant case, the Industrial Commission found that the access claimant used was the required access for factory employees. Although there is some evidence in the record that this particular door was not the required access, the evidence establishes that the time clock was located twenty feet from this particular door, that the parking lot for claimant was located across the street from this door, and, as claimant asserts, that she was instructed to use this door by the personnel office. The Industrial Commission's finding that the door through which claimant left work was the required, or at least the only practical access to and from the respondent's factory, is therefore supported by the evidence. Since there is no evidence that claimant deviated from her path to the parking lot, we must assume that her presence at the situs where she con-

tends the instant injury occurred was required by the respondent and incidental to her assigned duties. See *Robinson v. Industrial Com.* (1983), 96 Ill. 2d 87, 449 N.E.2d 106.

The Industrial Commission found that the flurry of exiting employees, combined with the icy sidewalk conditions, created a risk to which claimant was more susceptible than the general public. Although there was conflicting testimony as to the condition of the sidewalk, the Industrial Commission chose to believe claimant's allegation that the sidewalk was lumpy with ice. Moreover, although there was no testimony as to the exact number of employees leaving work at the same time as claimant, claimant said that after she had fallen "everybody was leaving work, they just walked around me." Roger Kulle, respondent's witness on review, testified that he also punched out at 4:30 p.m. The photographs of the doorway and adjacent sidewalk establish that the locality where claimant maintains she fell was within a few feet of the doorway. Thus, the Industrial Commission's finding that the claimant was exposed to a hazard to a greater degree than that to which the general public is exposed was not contrary to the manifest weight of the evidence. Consequently, we conclude that claimant's injury is compensable.

The second issue raised by respondent concerns the Industrial Commission's refusal on review to allow respondent (1) to present the testimony of an alleged eyewitness and an architect and (2) to admit a recent medical examination of claimant. Since the recent medical examination of claimant is related to the issue respondent raises regarding the medical expenses, the propriety of the exclusion of this evidence will be discussed in that context.

The Industrial Commission is bound to consider all evidence properly presented to it and to the arbitrator in making a decision. *(Gray v. Industrial Com.* (1979), 76 Ill. 2d 552, 558-59, 394 N.E.2d 1153, 1155.) According to Industrial Commission Rule No. 4-(4)-(b)-(3) "[e]vidence

may be adduced on review if the evidence *** was not introduced at the arbitration hearing for good cause." Thus, new evidence should be permitted before the Industrial Commission after good cause is shown for the failure to present such evidence before the arbitrator. See *Werries v. Industrial Com.* (4th Dist. 1985), 136 Ill. App. 3d 731, 736, 483 N.E.2d 668, 672, leave to appeal granted on February 5, 1986, Gen. No. 62539, ____ Ill. 2d ____, ____ N.E.2d ____.

The alleged eyewitness testified that he informed respondent three years prior to the arbitration hearing that he had witnessed claimant's fall. Moreover, the numerous architectural drawings admitted into evidence in this case indicate that the respondent knew of the architect's existence long before the claimant's injury. Respondent therefore cannot claim that it was not aware of the existence of these witnesses prior to the arbitration hearing. Thus, the Industrial Commission properly could find that respondent had not shown good cause for its failure to present this evidence before the arbitrator; and as a consequence, the exclusion of this evidence did not violate respondent's due process rights.

Furthermore, respondent would not be entitled to relief even if it had shown good cause for its failure to present this evidence before the arbitrator. It is represented that the alleged eyewitness would have testified that he saw claimant fall on the street rather than the sidewalk and that, rather than one required exit from the building, there were three permissible modes of exit from the respondent's plant. The architect would have testified that the claimant fell off the respondent's premises. Since we have concluded that claimant fell off the employer's premises and that there may have been more than one permissible mode of exit from respondent's plant, the excluded testimony would have been merely cumulative. Thus, even if it was error to exclude this testimony, the error was harmless. *Fleming v. Industrial Com.* (1983), 95 Ill. 2d 329, 335, 447 N.E.2d 819, 822.

The third issue raised by respondent is that the Industrial Commission's finding that claimant was entitled to 80% permanent disability under the "man as a whole" provision was contrary to the manifest weight of the evidence. In pertinent part this provision states:

> "If, as a result of the accident, the employee sustains serious and permanent injuries not covered by paragraphs (c) and (e) of this Section, or having sustained injuries covered by the aforesaid paragraphs (c) and (e), he shall have sustained in addition thereto other injuries which injuries do not incapacitate him from pursuing the duties of his employment but which would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or if such injuries partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity, or having resulted in an impairment of earning capacity, the employee elects to waive his right to recover under the foregoing subparagraph 1 of paragraph (d) of this Section, then in any of the foregoing events, he shall receive in addition to compensation for temporaty total disability under paragraph (b) of this Section, compensation at the rate provided in subparagraph 2.1 of paragraph (b) of this Section for that percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." Ill. Rev. Stat. 1981, ch. 48, par. 138.8(d) (2).

In the instant case, the medical report of March 13, 1981, stated that claimant "has a total disability on an industrial basis" due to the injury. The Industrial Commission relied upon this report in finding the 80% permanent disability. Moreover, the Industrial Commission saw claimant at the hearing on review. Thus, there is evidence to support the finding of the Commission.

The fourth issue raised by respondent is that the award of $69,686.90 in medical expenses as a result of the alleged injury is not supported by the evidence. Specifically, respondent asserts that there is no causal connection between the injury and the extensive medical care provided. In its decision, the Industrial Commission found that the treatment claimant received was "reasonably necessary to cure or bring relief from the effects of the injury." Although claimant alleges that respondent has waived this issue by its failure to assert it prior to the instant appeal, the record shows that respondent questioned the causal connection between the injury and the treatment claimant received at the hearing before the Industrial Commission. Since the medical bills were not introduced into evidence at the arbitration hearing, the hearing before the Commission was respondent's first opportunity to object to them. Consequently, the respondent did not waive the issue.

As respondent alleges in its brief, no evidence of claimant's medical treatment was presented outside of the voluminous treatment records submitted to the Industrial Commission upon review. In *Jewel Companies, v. Industrial Com.* (1st Dist. 1984), 125 Ill. App. 3d 92, 465 N.E.2d 935, this court noted that claimants bear the burden of proving reasonable medical expenses by a preponderance of the evidence and that "a physician's bill which was a hodge-podge of items not clearly related to the injury" is not a sufficient basis upon which to award reasonable medical expenses (125 Ill. App. 3d 92, 94-95, 465 N.E.2d 935, 936). Applying this rationale to the case at bar, we conclude that claimant's medical treatment records cannot be clearly related to the injury without the submission of additional evidence. We therefore reverse the medical expense award and remand this cause to the Industrial Commission for the submission of additional evidence relating to the amount of medical ex-

penses which properly may be awarded to claimant.

For the foregoing reasons, the award of temporary total disability compensation and the award for an 80% permanent disability are affirmed. The medical expense award is reversed and the cause is remanded to the Industrial Commission for the submission of additional evidence relating to the propriety of the medical expenses.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

WEBBER, P.J., BARRY, LINDBERG, McNAMARA, JJ., CONCUR.

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706
September 16, 1986

MR. TERRANCE J. VAN DRISKA
Attorney at Law
188 West Randolph Street
Chicago, Il 60601

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 63815 - Gray Hill, Inc., petitioner, v. The Industrial Commission of Illinois (Audrey Lietz, respondent).

On the Court's own motion, the petition for appeal as a matter of right and, alternatively, for leave to appeal is dismissed for failing to lie under either Rule 317 or Rule 315.

JH:sdl

cc: Krol, Bongiorno & Given, Ltd. (Kenneth R. Given)

IN THE CIRCUIT COURT OF COOK COUNTY

GRAY HILL, INC.,

Plaintiff,

v.

INDUSTRIAL COMMISSION OF ILLINOIS and AUDREY LIETZ,

Defendant.

No. 84 L 52220

ORDER

This cause coming to be heard on plaintiff's writ of certiorari with briefs having been filed by both parties and appearing in Court on June 14, 1985, it is hereby ordered the award of the Industrial Commission is affirmed for the reasons set forth in the attached *MEMORANDUM OF DECISION.*

Judge
Judge's No.

IN THE CIRCUIT COURT OF COOK COUNTY,
COUNTY DEPARTMENT - TAX DIVISION

GRAY HILL, INC.,
Plaintiff,

vs.

INDUSTRIAL COMMISSION OF ILLINOIS and AUDREY LIETZ
Defendant

84 L 52220

MEMORANDUM OF DECISION

The claimant, age 31, is a single but twice divorced woman. No issue was born as a result of her marriages. She was employed as an assembler of electronic switches.

I

The Commission found as a matter of fact:

1 - That the doorway through which the claimant exited was the only permissible exit designated for the factory employees;

2 - She exited during the rush hour period;

3 - The property adjacent to the cross-walk had been improved by the employer;

4 - That her route was attendant with dual hazards: icy conditions and the flurry of rushing employees.

The Commission then concluded as a matter of law, the dual hazards caused the route to become part of the employment, citing: *(Bommarito v. Industrial Commission*, 82 Ill 2d 191. Further, even if the injury is deemed to have occurred off the employer's premises, the employee was exposed to,

> "A risk common to the general public to a greater degree than other persons."

The Commission then stated that the occur-

rence must be deemed to have arisen out of her employment.

II

The Commission with reference to the issue of the *caused connection* and temporary total disability adopted the findings of the arbitrator and specified its reasons for so doing. It concluded she was temporarily totally disabled for 160-1/7 weeks.

III

The Commission found on the issue of *permanent disability,* that Audrey Lietz is permanently disabled to the extent of 80% under Section 8(D)2 of the Act. It predicated its determination on the medical findings of Dr. Barnett.

IV

The Commission found that she was entitled to $69,686.90 for medical expenses based upon: Medical bills placed of record.

COURT'S COMMENTS

The Commission in its reliance on *Bommarito* sought to bring the fact pattern of this case within its parameters or ambit. The Supreme Court stated,

> "The rule is clear and well established that when an employee incurs injuries at a place off the employer's premises while traveling to and from work, the injuries are not compensable unless the employee's presence at the place where the accident occurred was required in the performance of his duties. Further injuries incurred off the employer's premises are compensable only when the employee is exposed to a risk common to the general public to a greater degree than other persons. Morever, if the risk or hazard is so increased by the employment, it does not matter that the injury is unusual, or unexpected, or that it is not peculiar to the employment."

The Court then quoated from Professor Larson that where an injury took place in an area which is the sole and usual route to the employer's premises *and* the route is attended with a special risk or hazard, the hazard becomes part of employment.

Justice Ryan in his dissent sought to refute the majority opinion on two propositions. *First*, challenging the majority's contention with reference to,

> "The question is whether these *UNDISPUTED FACTS* establish that the claimant suffered injuries arising out and in the course of her employment. This question is one of law and the decision is one of the Commission and is not binding upon this Court."

Second, Justice Ryan contended that the majority opinion defines no special hazard. He further stated that to come within the special hazard exception, the employee must prove that she was subjected to a special hazard to which the general public was not exposed or to which she was exposed peculiarly and to a greater degree than the public.

The Commission in this case sought to obviate the criticism of the dissent by Justice Ryan in *Bommarito v. Industrial* Commission, 82 Ill 2d 191. The commission sought to define the special hazards that confronted the employee as she departed from an alleged required exit on the sole or usual "corridor" to the company parking lot.

In order to be compensable, the injury must arise out of a worker's employment. In other words, it must have its origin in some risk connected with or incident to the employment so that there is a causal connection between the employment and the injury. This is to be contrasted with an injury which results from a danger to which the worker would have been equally exposed apart from the employment. That injury cannot be said

to arise out of the employment. (*Greene v. Industrial Commission*, 87 Ill.2d 1, 4.)

On review, this Court is limited to considering only whether the *FACTUAL DETERMINATIONS* of the Commission are against the manifest weight of the evidence. (*Pontiac Chaer v. Industrial U.S. Commission*, 59 Ill.2d 161, 266)

The Commission must determine the nature and extent of an employee's disability and to draw reasonable inferences from the evidences. A reviewing court may not discard permissible inferences drawn by the Commission simply because the Court may have drawn opposing inferences.

The dissent of Commissioner Miller has its primary premise that the employee has failed to prove she sustained and disability or incurred any loss reasonable and necessary medical expense as a result of an accident arising out of and occurring in the course of her employment.

The testimony of various doctors merely creates a factual dispute that has to be resolved by the Commission;

> "An employee is totally and permanently disabled for the purpose of Workmen's Compensation benefits when he or she is unable to make some contribution to industry sufficient to justify payment to him of wages." (*South Import Motors v. Industrial Commission*, 52 Ill.2d 485, 488)

This requirement does not require that the employee must be reduced to state of total physical incapacity before she can be said to be totally and permanently disabled. The Commission in determining the issue of permanent disability may properly consider the claimant's injury, the nature of her employment, her age, training and capabilities. (*Springfield Park District, v. Industrial Commission,* Ill 2d 67,73)

It is well settled that a court may not reverse a decision of the Industrial Commission unless that decision is contrary to the manifest weight of the evidence.

It is also the singular province of the Industrial Commission to determine the credibility of witnesses and weight to be given to the evidence. (*Berry v. Industrial Commission*, 99 Ill 2d 401, 405)

For reasons best known to itself, the employer or insurance carrier did to undertake a "careful" investigation of the claim until the scope of the financial obligation was determined by the arbitrator. This was apparent and was underscored not only by the facts, but also by Mr. Van Driska, when he stated,

> "There was a perfunctory investigation made by an individual who no longer is employed by Kemper Insurance Company. *After the arbitrator's award,* additional inquiries were made to - further investigations were conducted. And for the first time, the existence of an eyewitness was known to me and to the Kemper Insurance Company."

The lapse time between the date of the accident and arbitration hearing was some 40 months. The necessity for good cause required by the rules imposed a mandate upon the employer. This mandate was not met. The Commission within its discretion properly disallowed the witness from testifying.

* * * * *

This Court in reviewing the entire record cannot conclude that the factual basis and the inferences which the Commission obviously drew were unreasonable or that the finding of the majority of the Industrial Commission was contrary to the manifest weight of the evidence.

JUDGE EARL ARKISS
JUN 14 1985 598
CIRCUIT COURT

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

State of Illinois §§
County of Cook

Audrey Lietz,
Petitioner,

vs.

NO. 78WC 17797
84 IIC 449

Gray Hill, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Respondent appeals the Decision of Arbitrator Dillon finding that as the result of accidental injuries arising out of and in the course of her employment on February 6, 1978 Petitioner was temporarily totally disabled for 160 1/7 weeks under §8(b) of the Workers' Compensation Act and was permanently disabled to the extent of 80% under §8(d)2 of the Act. The issues on Review are whether Petitioner sustained such injuries and whether a causal connection exists between her condition of ill-being and the accident, and if so, the extent of her temporary total disability, the nature and extent of her permanent disability, and the amount of necessary medical expenses under §8(a) of the Act. The Commission, having considered the entire record and observing the Petitioner at Oral Arguments held before a majority of the Commission on June 8, 1983, affirms the Decision of the Arbitrator, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission finds Petitioner sustained accidental injuries arising out of and in the course of her employment on February 6, 1978, for the following reasons:

a. Petitioner was a 31 year old assembler. She testified that on February 6, 1978 she exited Respondent's premises by way of a side door. Petitioner testified and a map was admitted showing that after punching out about 4:30 p.m., she proceeded out of the side

door and stepped across a sidewalk perpendicular to the first sidewalk and to Respondent's building which lead to the curb and street. Petitioner stated that she then slipped and fell to the sidewalk which was partially covered with ice and lumpy in appearance, adding that it had been partially shoveled.

b. The doorway through which the Petitioner exited was located near the factory employee's time clock and was the only permissible exit designated for factory employees. Petitioner testified that at the beginning of her employment, she was instructed by a member of the personnel department to use only the side door.

c. Petitioner exited Respondent's premises during a rush hour period. This is evidenced by her testimony that everyone was leaving work and fellow workers walked around her after she fell.

d. The property situated adjacent to the crosswalk had been improved by the Respondent. The improvements included the placement of park benches and waste containers for the purpose of providing lunch and break areas for the convenience of Respondent's employees. Petitioner testified that at 7:30 a.m. on the morning of the day she fell, she noticed a man shoveling snow in the area of the fall and that on previous occasions she had seen the man working in Respondent's plant.

The Commission finds based on the above fact and an analysis of related Illinois Supreme Court cases that the sole permissible means of exit from Respondent's premises was the route she was travelling at the time of her accident on February 6, 1978, and said route was attendant with the dual hazards of an icy condition and the flurry of rushing employees thereby causing the hazardous route to become part of the employment, *Bommarito v. Industrial Commission,* 82 Ill. 2d 191 (1980). The Illinois Supreme Court has held that an employee who slips and falls while in a parking lot

which the employer has provided for its employees, and which is being used by the employee for the purpose at that time, may be compensated by the employee for his injuries. In the instant cases, the "corridor" which the Petitioner was travelling to reach the employee parking lot was not only maintained by the Respondent, but was also surrounded by improvements made by Respondent for functional and esthetic purposes, and attendant with the hazards of icy conditions and the flow of employee exiting the factory to the employee parking lot.

Futhermore, even if the injury is deemed to have occurred off the Respondent's premises, the injury in this case is compensable, since the Petitioner was exposed to a risk common to the general public to a greater degree than other persons, *Deal v. Industrial Commission*, 65 Ill. 2d 234 (1976). Again, regarding the particular set of facts before us, the Petitioner's mandated route of exit was the avenue she took on the date of the accident. To reach the designated employee parking lot she, by necessity, had to walk in the midst of hurried co-workers and a top of a dangerous walkway.

The Commission finds that the especially hazardous conditions encountered by the Petitioner as the result of the Respondent's order to use a designated exit and the ensuing accident, must be deemed to have arisen out of her employment.

2. On the issues of causal connection and temporary total disability, the Commission adopts the findings of the Arbitrator, for the following reasons:

> a. The day after Petitioner sllipped and fell on the ice-covered sidewalk she was sent to LaGrange Community Hospital where her neck, shoulder, and wrist were x-rayed. On the basis of the x-rays and his examination of Petitioner, Dr. Lopez placed her left arm in a sling and her neck in a neck brace, ordered her to remain immobile, and referred her to

orthopedic surgeon, Dr. Blecha. Dr. Blecha recommended a program of physical therapy, ultraheat, traction and massage. Petitioner was discharged from Dr. Blecha's care on April 10, 1978 and returned to work that same day, but testified she was unable to work the next day due to back and neck pain as well as inability to move her hand.

b. Petitioner was referred to Dr. Beatty, a neurosurgeon who examined her on April 25, 1978 and May 16, 1978. Dr. Beatty prescribed medication and ordered Petitioner to be placed on a home cervical traction unit. Petitioner returned to work on a part-time basis on May 17, 1978, and resumed full time employment on May 30, 1978, at which time she complained that the condition of her back was worse, her pain had increased, and she could not work without tremendous difficulty.

c. Petitioner sought medical care from Dr. Kawanga on October 5, 1978. On his advice, Petitioner was admitted to Suburban Hospital in Hinsdale from October 9, 1978 to December 15, 1978. She was released for a short period, but was readmitted to the hospital from January 13, 1979 to April 2, 1979 under the care of Dr. Kawanga. She was then admitted to Marianjoy Rehabilitation Hospital in Wheaton from April 3, 1979 to May 21, 1979 to undergo a rehabilitation program, and was then admitted to Central DuPage Hospital from May 21 to May 22, 1984 during which time she underwent a lumbar myelogram. Petitioner was sent back to Marianjoy Rehabilitation Center from May 22, 1979 to June 27, 1979 for physical therapy, relaxation and pool therapy, and then came under the outpatient care of Dr. Kawanga until she was admitted again to Suburban Hospital from March 24, 1980 to June 9, 1980 for a lum-

bar laminectomy, after which she was admitted to that hospital from June 17, 1980, to June 25, 1980 and from August 25, 1980 to September 19, 1980 for treatment and observation.

d. Petitioner testified she has had serious problems in moving about, and complained of loss of sensation in her hand and that she constantly experienced severe pain in her lumbosacral spine and in her legs.

Based on the above, the Commission finds that the Petitioner's condition of ill-being is causally related to the accident of February 6, 1978, and that she was temporarily totally disabled for 160 1/7 weeks as the result of the accident.

3. On the issue of the nature and extent of Petitioner's permanent disability, the Commission finds that Petitioner is permanently disabled to the extent of 80%under §8(d)2 of the Act, for the following reasons:

Dr. Barnett examined Petitioner at her request on March 13, 1981 and noted an axillar scar approximately 12 cm long and a laminectomy scar 11 cm long, forward flexion of her back was 0° normal being 90° backward flexion was 0° with normal 35°, left and right lateral flexion 0° with normal 40°, the Ely, Gaenslen, Faber and LaSegue signs were all positive bilaterally, forward flexion of her neck was 40° with normal 50°, backward flexion 20° with normal 50°, bilateral flexion 15° with normal 40°, and rotation to the right and left was restricted 30° from normal.

Petitioner has continued to complain about pain in her back and legs and extreme difficulty functioning and moving about.

Based on the above, the Commission finds that the Petitioner was permanently disabled to the extent of 80° under §8(d)2 of the Act.

4. On the issue of medical expense, the Commission finds that the Petitioner is entitled to receive the sum of $69,686.90 for medical expenses reasonably necessary to cure or bring relief from the effects of the injury. The finding is based on the following facts of records: evidence of these medical bills were presented on Review by the Petitioner, and represent hospital bills, physical and medication all related to Petitioner's injury. The array of bills originated in part from Suburban Hospital, Marianjoy Rehabilitation Center, and various doctors including Dr. Kawanga and Dr. Darwish.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated August 26, 1981 is hereby adopted and affirmed.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to the Petitioner $69,686.90 for necessary medical expenses as provided for under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to the Petitioner interest under §19(n) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by the Respondent is hereby fixed at the sum of $75,000.00 and the probable cost of the record to be filed as return to Writ of Certiorari is the sum of $35.00, payable to the Industrial Commission of Illinois in the form of cash, check or money order therefor and deposited with the Secretary's Office of the Commission.

CALVIN TANSOR
Calvin Tansor

TED BLACK, JR.

Ted Black Jr.

NORMAN BROWN
Norman Brown

DISSENTING OPINION

I respectfully dissent from the Decision of the majority finding that as the result of accidental injuries arising out of and occurring in the course of her employment on February 6, 1978 Petitioner was temporarily totally disabled for a period of 160 1/7 weeks and is permanently disabled to the extent of 80% under §8(d)2 of the Act.

1. In arriving at the conclusion that this accident which occurred after Petitioner had completed her day's employment, punched her time out on the time clock, exited the work building in order to proceed toward her home, crossed a *public* sidewalk, and fell as she had begun to cross a *public* parkway area before crossing a *public* curb and street on her way to her car in a parking lot, the majority asserts that:

a) *The fall occurred "during a rush hour period"* - with no indication whatsoever that there was, in fact, any particular number of employees or any other factor to establish a "rush" - except as evidenced by her testimony "everyone" was leaving work and "fellow workers walked around her after she fell"; this fails to establish that during Petitioner's exit (even were the course she was taking proven to be the only one available to her) she was exposed to hazards, beyond those to which the general public is exposed, based on the "mass and speedy exodus" of departing employees (Cf. *Doyle* v. *Industrial Commission*, 95 Ill. 2d 103 (1983). The majority notes no testimony or other evidence whatsoever as to either the number or the speed or crowding of any other employees or other

persons.

(b) *The "route (Petitioner) was travelling at the time of her accident" was "the sole permissible means of exit from Respondent's premises"* - although even if, as concluded by the majority, Petitioner was required to use the *"door"* by which she exited the building there is no evidence whatsoever that she was required to proceed *across* the public sidewalk and to *cross* the public parkway at the place she did, instead, for example, of turning to her left or to her right on the first public sidewalk, and either continuing on in either of those directions, or crossing the parkway at a totally different place than where she did when she fell, or that she was "required" to use the parking lot to which she was heading rather than to park in other public areas or to take public transportation. These factors certainly present an essential area of differentiation between the facts before us and those in *Bommarito* or *Deal* - had, Petitioner fallen due to some defect or hazard in the sidewalk immediately outside of a "sole exit" door, for example, she might have had a stronger argument.

c). *The "said route was attendant with the dual hazards of an icy condition and the flurry of rushing employees thereby causing the hazardous route to become part of the employment"* - the lack of demonstration by the majority of any "flurry of rushing employees" is noted in a) above, and the only reference by the majority to the parkway walk's "hazards" is that it "was partially covered with ice and lumpy in appearance", with no indication that the walk was any lumpier or icier than the public sidewalk Petitioner had already crossed (and could have chosen to use instead of the crosswalk), or, in any case, that she was exposed by the condition of either the sidewalk *or* the crosswalk to any hazard to which the general public was not equally exposed due to the general weather conditions on the day in question,

thus further distinguishing the facts in this case from those in *Bommarito.*

d). *"The "corridor" which Petitioner was travelling . . . was . . . maintained by the Respondent"* - the only evidence cited by the majority in support of this conclusion, even assuming its relevance to the question of Respondent's liability, is Petitioner's testimony that at 7:30 a.m. *she noticed a man* [she had previously seen "working" (not necessarily as Respondent's employee) in Respondent's plant] *shoveling snow in the area of the fall . . . ."* There is no showing that Respondent had constructed the public walkway in question, or that it or the "adjacent" improvements - or the shoveling, (or any use of the area for break or lunch periods) had contributed in any way to Petitioner's fall, or that any such improvements or the shoveling - even if by Respondent - would impose liability under Illinois law; cf. *Doyle v. Industrial Commission*, supra.

e). *"The public property situated adjacent to the crosswalk had been improved by the Respondent"* - although even if the "improvements" extended beyond "the placement of park benches and waste containers for the purpose of providing lunch and break areas for the convenience of Respondent's employees", shown by the majority as the sole illustrations of those "improvements", the reasoning in the *Doyle* case in declining "to hold that an employer's contribution to the improvement of a public street or occasional maintenance of that street extends the premises of the employer to a public street" would preclude the finding of the majority that the public parkway walk in this case became "part of the employment".

I would therefore find that Petitioner failed to prove the injuries she sustained arose out of and in the course of her employment.

2. The majority fails to set forth evidence of any

medical opinion whatsoever as to the causal connection between Petitioner's various complaints and her fall (which is particularly relevant to the back condition and surgery since the majority shows no complaint, finding, or treatment of the back before May 30), as to the necessity for 160 1/7 weeks of temporary total disability, or as to the reasonablness, necessity, and causal relationship of the almost $70,000.00 in medical expenses claimed, and sets forth no reasons for selecting *only* the findings of Petitioner's examining physician as the basis for its award of 400 weeks of compensation based on an 80% loss under §8(d)2 of the Act. The decision therefore fails to meet the requirements of §19(e).

In any event, for the reasons set forth above and based upon the facts and factors set forth by the majority, I would find Petitioner has failed to prove she sustained any disability or incurred any reasonable and necessary medical expense as the result of an accident arising out of and ocurring in the course of her employment.

Ralph W. Miller, Jr.

BEFORE THE INDUSTRIAL COMMISSION OF ILLINOIS

STATE OF ILLINOIS

County Of Cook

Audrey Lietz, *Petitioner,*	}	No. 78 WC 17797
vs.		
Gray Hill, Inc., *Respondent.*	}	

NOTICE OF DECISION AND DECISION OF ARBITRATOR

Take notice that on September 11, 1981, the decision of the Arbitrator set forth below, was filed with the Industrial Commission.

An application for adjustment of claim having been filed in this matter and notice of hearing mailed to each party. The matter was heard by an Arbitrator designated by the Commission in the City of Chicago, said County and State, on July 27, 1981. After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the arbitrator concludes.

On February 6, 1978, the Respondent Gray Hill, Inc., was operating under and subject to the provisions of the Illinois Workers' Compensation Act; that on said date the relationship of employee and employer existed between the Petitioner Audrey Lietz and said Respondent; that on the above mentioned date Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent; timely notice of this accident was given the Respondent.

The earnings of the Petitioner during the year next preceding the injury were $6,718.40 and that the average weekly wage was $129.20.

Petitioner at time of injury was 31 years of age,

single and had no children under 18 years of age.

Necessary first aid, medical, surgical and hospital services have not been provided by the Respondent herein.

Petitioner is entitled to have and receive from said Respondent the sum of $100.90 per week for a period of 160 1/7 weeks, that being the period of temporary total incapacity for work, for which compensation is payable.

The sum of $706.30 has been paid on account of said injury.

The Arbitrator renders findings on the following disputed issues.

Relating to whether an accident arose out of & in course of Petitioner's employment by Respondent; the Arbitrator finds:

The Petitioner was on her way to the Respondent's parking lot reserved for Respondent's employees, where she was told to park her car, free, to go home after lunching out at the end of the day. If she had slipped on ice in the Respondent's parking lot the case would be clearly compensable. It makes no difference the sidewalk was publicly owned she was clearly where hor job put her.

Relating to reasonableness or necessity of medical, surgical or hospital bills or services; amount of compensation due for temporary total disability; whether Petitioner's present condition of ill-being is causally related to the injury; the Arbitrator finds:

The testimony of the Petitioner and the nature and extent of injury. The bills were not introduced but will be on Review. The Petitioner is entitled to be reimbursed therefore.

Relating to nature & extent of the injury; the Arbitrator finds:

The Arbitrator adopts the findings of the Petitioner's doctor but not his conclusion.

The Arbitrator is not convinced that the Petitioner

at age 33 or 34 is permanently and totally disabled from work and would recommend rehabilitation.

Petitioner is entitled to have and receive from said Respondent the sum of $86.13 per week for a further period of 400 weeks, as provided in paragraph (d-2) of Section 8 of said Act, as amended, for the reason that the injuries sustained caused the partial disability of the Petitioner to the extent of 80% thereof.

That said Petitioner is now entitled to have and receive from the Respondent compensation that has accrued intermittently from February 6, 1978 through August 10, 1981, and the remainder, if any, of the award to be paid to Petitioner by Respondent in weekly payments.

You are further notified that unless a petition for review is filed with the Industrial Commission within fifteen (15) days after receipt of this decision and a review perfected in accordance with the Workers' Compensation Act and the Rules of the Industrial Commission, then the decision of the Arbitrator shall be entered as the decision of the Industial Commission.

DATED and ENTERED this date August 28, 1981

THOMAS A. DILLON,
ARBITRATOR.

Clerk's Office
APPELLATE COURT FIRST DISTRICT
State of Illinois
Richard J. Daley Center, Rm. 2830
Chicago, Illinois 60602

10/15/86

RE: Gray Hill, Inc. v. Lietz, Audrey Appellate Court No. 1-85-2111WC Trial Court No. WC 84L52220

Dear Counsel:

We have this day transmitted to the Clerk of the Circuit Court of Cook County the mandate of the Appellate Court.

GILBERT S. MARCHMAN
Clerk of the Appellate Court
First District, Illinois

Krol, Bongiorno & Given, Ltd.

100 West Monroe Street, Suite 1610
Chicago, IL 60603

Clerk's Office
APPELLATE COURT FIRST DISTRICT
State of Illinois
Richard J. Daley Center, Rm. 2830
Chicago, Illinois 60602

11/12/86

Honorable Morgan M. Finley
Circuit Court of Cook County
Chicago, Illinois

Re: Gray Hill, Inc. vs. Lietz, Audrey
Appellate Court No. WC
84L52220

Dear Mr. Finley:

We have been instructed to recall the original mandate issued to you on 10/15/86, in the above entitled cause.

Kindly return the mandate to us at your earliest convenience.

Very truly yours,

Gilbert S. Marchman
Clerk of the Appellate Court
First District, Illinois

cc: Terrance J. Van Driska
188 W. Randolph St., Suite 714
Chicago, IL 60601